

Living River Council Comments **Nonpoint Source Sediment TMDL Conditional Waiver for** **Vineyards in Sonoma Creek and the Napa River watershed** **CEQA Mitigated Negative Declaration**

January 22, 2013

1. Page 3: Table 1. Summary of Conditional Waiver (CW) eligibility, exclusions and Exemption criteria: **Why did the SFRWQCB determine that Conditional Waiver (CW) coverage need not apply to these vineyards: slopes < 5 acres, < 40 acres flat & < 20 sloped? Did the Technical Advisory Panel have proof that these category of vineyards do not discharge sediment to water of the State and if so can you provide this to the public? How many acres will not be covered in these categories? Has the Water Board (WB) determined that leaving out these categories of vineyards will still achieve sediment TMDL goal to reduce sediment by 50%? Will anti-degradation WB policies still be met by leaving out these category vineyards?**
Rationale: Poorly developed small vineyards flat or sloped can discharge large amounts of sediment and cause harm to streams. The Water Board should develop an EIR to discuss and show proof that these categories of vineyard can avoid the CW.
2. Table 2 pg 6: **While the CW instructs owner/operator to comply with all Federal, State, County and City permits prior to vineyard facility installation including 404 permits to fill wetlands, by omitting some vineyards from the CW due to size of vineyard and or slope, couldn't this cause the destruction/erosion/fill of precious wetlands not mitigated in this MND.** This is a significant cumulative impact as a direct cause of the CW requiring an EIR. Rationale: there is no other agency protecting wetlands not hydrologically connected to streams (Army Corp of Engineers has jurisdictional wetlands). Other responsible agencies of natural resources simply do not respond prior to vineyard development to protect fragile wetland habitats and consequently with the failure of lack of adequate coverage (vineyard facilities <5 acres, < 40 acres flat, < 20 slopes) by this CW to protect these waters of the State an EIR level CEQA review must be done to discuss and mitigate for this.
3. Chart 2 pgs. 12-13 & pgs. 61-62 MND suggests implementation of best practicable treatment practices such as energy dissipaters (pipes with holes) and or erosion facility infrastructure (pipes) which can concentrate pollution and flows to down slope land or creeks. **Can't this change hydrological and biological impacts from less than significant to significant requiring an EIR? Example: Burton Creek in 2011-2012 had catastrophic sediments flows from a failed energy dissipaters installed under the supervision of the Napa Resource Conservation District in addition to failed vineyard facilities such as detentions basins requiring enforcement actions by the SWRCB.** Rationale: Retention of native vegetation and riparian setbacks, avoid deforestation, sink, spread and slow runoff and maintain it on site is the policy of the WBs.
4. Chart 2 & pg 61-62: Once you concentrate pollution and flows into pipes you create a point source pollution point. These types of vineyard facilities cause significant cumulative impacts such as: concentrated pollution, increased rate of runoff which can collapse stream banks, incises streams by down-cutting stream beds. This is not

- adequately described in this MND. An EIR level CEQA document should discuss and fully mitigate this impact with discussions of alternatives to pipe infrastructures.
5. Chart 2: Implementation of sediment basins/detention basins: **to what year storm event will these basins be engineered to? When they over top will they cause significant environmental damage to down slope lands and streams? Once the detention basin over fill and spill/ will they cause harm to water quality?** The MND does not discuss these environmental impacts. Note: LRC has seen these basins built on steep slopes (RCD approved) that have failed causing catastrophic erosion into streams for miles devastating aquatic life.
 6. Page 7: **Delete all references to Rutherford Dust (RD) project: 1.) there is no proof that this projects have improved water quality or fish habitat. 2.) RD visual inspections have been done and LRC has exhausted our efforts to obtain substantive monitoring information (temperature, water quality, fish counts, BMI) to measure the outcomes of the Napa County Flood and Water Conservation District efforts 3.) RD is a project using public funds for individual vineyard owners to reduce severe erosion and flooding events. 4.) There was NO baseline biological site monitoring done prior to the re-contouring of existing levee structure to change the bed and banks of the Napa River proving to be high impact construction and the removal of 400 year old ancient tree canopy for this project . Rationale: The WB falsely characterizes Rutherford Dust as a project to be touted in the CW MND, yet this phased project used high impact development techniques and large riparian tree removal-all considered undesirable best practicable treatments to improve water quality by the State Water Resource Department. This is not a project to make an example about in the MND by the State's own current policies and standards of low impact restoration. (See Integrated Regional Water Management Plan for the Bay Area) The WB should be promoting low impact restoration with adaptive management techniques.**
 7. Page 24. Environmental Factors Potentially affected: check impact: hydrology/water quality as significant impacts: apply comments 1-5 above.
 8. Pg. 32: Agricultural and Forest Resources: vineyards that are < 5 acres, < 40 acres flat, < 20 sloped are not required to have a CW to control erosion. **Won't more small project be installed to avoid the Napa Sediment TMDL implementation program/CW thereby causing more deforestation to occur?** Impacts include: fragmentation of forestlands, erosion, and diminished carbon sink capable of combating climate change, diminishes groundwater recharge as deforestation increases. These impacts are significant and will be cumulative requiring an EIR. 9.
 9. Page 57 Climate Change: vineyards that are < 5 acres, < 40 acres flat, < 20 sloped are not required to have a CW to control erosion. **Will more small project be installed to avoid the Napa Sediment TMDL implementation program/CW?** Impacts could include: fragmentation of forestlands, diminished carbon sink capable of combating climate change. These impacts are significant and cumulative requiring an EIR. Hydrology and Water Quality: apply comments 1-5
 10. 11. Pg. 64 in regards to groundwater impacts: #8 comment
 11. The Technical Advisory Committee decided on the criteria for determining no vineyard coverage under the CW. While any vineyard that discharges sediment could be subject to the SWRCB's Wastewater Discharge Requirements for illicit discharges this would be after the fact that damage to water quality has occurred and enforcement actions need to take place. **Why not prevent discharge and aim for reducing sediment, improving water quality and protecting the public trust?**
 12. Page 8-9 Water Quality Farm Plan is kept on the property owner's/ manger's farm where the conditional waiver is implemented. The public has no access to Farm Plans. **Should**

the polluters or third parties be in charge of their own enforcement of sediment discharges? Is this a lawful practice to achieve water quality objectives?

13. Page 8-9 Water quality Farm Plans: The WB has determined that Farm Plans are i.e.,: 1.) a moving document such that best practicable treatments could change from year to year 2) may include other parameters not involved with water quality i.e., labor practices, energy 3) may be proprietary having to do with the landowners quality of grape/wine produced such as trade secrets. **Shouldn't Farm Plans be the implementation tool of the Sonoma Creek and Napa River Sediment TMDL for vineyards therefore is transparent?** Rationale: The public has a right to know if vineyards are polluting the waters of the state and not complying with water quality objectives for these sediment TMDLs. The WB can not and will not check and monitor all individual vineyards. The public wants to be involved in recovery of our streams and rivers. We want to restore the public trust. The WB is setting up secret water quality Farm Plans so that business is done strictly between the WB and the landowner/dischargers, yet TMDLs are a public process. The WB sets up conditions to provide special treatment for these dischargers to remain a private matter for the discharger to keep their farming practices and best practicable treatments private when they involve the use of dangerous chemicals, stimulatory agents, erosion and severe green house gas emissions. Farm plans could easily be posted to the internet like many other permits/licenses and documents involving water quality and quantity that affect the public trust. The WB even goes as far as to discuss the wine industry as an economic power house that should be allowed special consideration and avoids the responsibility of the CW program being public and transparent.
14. Pg. 9-Effectiveness Monitoring: The WB orders describe monitoring specifics (orders #36-41). **Why aren't the same specifics incorporated into the CW?** Rationale: the CW only mentions effectiveness monitoring i.e., visually observing up and down stream for signs of erosion, incision etc. Doesn't the CW lack robust scientific monitoring? **Why isn't BMI and turbidity monitoring available to the Napa River in orders 36-41?** **Rationale: BMI tracks water quality trends over time and is scientifically rigorous. Turbidity monitoring is essential to salmonid viability but is eliminated from monitoring of the Napa River Sediment TMDL. Doesn't it appear that the CW and Orders are not internally correlated on this issue?**
15. The CW suggests that slow, sink and spread discharge flows and contains them on the landowner's property to prevent further contamination and increased runoff to receiving waters is the goal of the CW and improves water quality of waters of the State. Yet, the WB makes full reference to Fish Friendly Farming, Rutherford Dust and detention basins as possible mitigations to avoid discussing significant cumulative impacts in this initial study/mitigated negative declaration. Fish Friendly Farming does not mitigate for deforestation, climate change and habitat fragmentation all contributing to significant cumulative impacts. The Rutherford Dust has proven to be a high impact development project benefiting vineyard owners with public money with no biological monitoring to track before and after water quality results. Detention basin have proven to be catastrophic to water quality when failure occurs because of large storm events and are not sustainable. **Shouldn't the WB remain neutral and not represent projects as 'state of the art' (because the WB has zero scientific proof that these projects achieve water quality standards) to be seen as an example of possible good best practicable treatments to achieve water quality standards for these TMDLs.**